NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

AMGEN INC., AMGEN MANUFACTURING LIMITED, AMGEN USA, INC.,
Plaintiffs-Appellees

v.

SANOFI, AVENTISUB LLC, REGENERON PHARMACEUTICALS INC., SANOFI-AVENTIS U.S., LLC,
Defendants-Appellants

2017-1480

Appeal from the United States District Court for the District of Delaware in Nos. 1:14-cv-01317-SLR, 1:14-cv-01349-SLR, 1:14-cv-01393-SLR, and 1:14-cv-01414-SLR, Judge Sue L. Robinson.

ON MOTION

Before REYNA, *Circuit Judge*.

O R D E R

Dr. Luis Aparicio, MD; Dr. W. Ross Davis, MD; Dr. Avichai Eres, MD; Dr. Norman Lepor, MD; Dr. Mary McGowan, MD; Dr. Narendra Singh, MD; Dr. Paul

Thompson, MD; Rosa DeBernardo; and Alina Wilson move for leave to file a brief amici curiae in support of the appellants. The appellees oppose the motion.

The amici purport to offer their views as to the impacts of the district court's permanent injunction removing the appellants' drug from the market. The appellees argue that the amici seek to improperly supplement the record with factual assertions not before the district court and that the amici's assertions are conclusory and contradicted by the actual record.

Rule 29(b)(1) of the Federal Rules of Appellate Procedure authorize amici to seek leave of court to file a brief by stating their interest and "the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case." It cannot fairly be disputed that those requirements are met here.

Nor is it anywhere suggested in Rule 29 that a nonparty is required to confine itself to the record before the trial court. Indeed, one reason for submitting an amicus brief is because the brief contains "background or factual references that merit judicial notice." *Neonatology Assocs., P.A. v. C.I.R.*, 293 F.3d 128, 132 (3d Cir. 2002) (internal citation and quotation marks omitted) (Alito, J).

Ultimately, whether to permit a nonparty to submit a brief, as amicus curiae, is a matter of judicial discretion. *See N. Sec. Co. v. United States*, 191 U.S. 555 (1903); *United States v. Michigan*, 940 F.2d 143, 165 (6th Cir. 1991). Here, having considered all the circumstances, the court will accept the proposed brief.

The appellees' objections to the statements made in the brief are of record and will be available for the merits panel to ultimately decide whether the brief is helpful or whether it should simply be disregarded.

Accordingly,

IT IS ORDERED THAT:

The motion is granted. The amici brief is accepted for filing.

FOR THE COURT

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

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